

Title 40—Protection of Environment**CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY**

[FRL 1041-11]

**PART 25—PUBLIC PARTICIPATION IN
PROGRAMS UNDER THE RESOURCE
CONSERVATION AND RECOVERY
ACT, THE SAFE DRINKING WATER
ACT, AND THE CLEAN WATER ACT****Final Regulations****AGENCY:** Environmental Protection Agency.**ACTION:** Rule.

SUMMARY: These regulations are intended to encourage, provide for, and assist public participation under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act. They replace existing regulations for public participation in water programs and interim final regulations for public participation in solid waste management. The regulations include general provisions which require open processes of government and efforts to promote public awareness in the course of making decisions in programs and activities under the three Acts. Also included are requirements which apply to specific public participation mechanisms, such as public hearings and advisory groups. These regulations do not require the use of the specific mechanisms. The mechanisms must be used only if they are required in program regulations. Public participation regulations for one covered program are being promulgated simultaneously with these regulations. They are regulations governing public participation in the Municipal Wastewater Treatment Facility Construction Grants Program under the Clean Water Act. These regulations appear elsewhere in this issue of the *FEDERAL REGISTER*.

DATES: These regulations are effective on February 16, 1979, except as otherwise specified in § 25.2.

ADDRESSES: Comments submitted on these regulations may be inspected at the Public Information Reference Unit, EPA Headquarters, Room 2922, Waterside Mall, 401 M Street, SW., Washington, D.C. between 8:00 a.m. and 4:30 p.m. on business days.

**FOR FURTHER INFORMATION
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SUPPLEMENTARY INFORMATION: EPA has received a significant volume

of thoughtful criticism of its performance in implementing its legal public participation mandates and its more general responsibility to involve the public in significant governmental decisions. This criticism has been stimulated in part by the desire of citizens to be active in shaping government programs which affect their lives and also by the growing need for governmental units at all levels to participate in the programs of other governmental entities. Government decision-makers have become increasingly aware of the capability of citizens to make constructive use of opportunities for involvement. This new awareness has been accompanied by increased practical experience in using approaches and techniques to facilitate citizen involvement.

In response to the circumstances discussed briefly above, the EPA perceived a new opportunity to better define public participation requirements, to eliminate unnecessary requirements, and to assure consistency of requirements under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act. This effort is intended to foster improved public involvement in governmental decisions by clarifying the rights and responsibilities of potential participants and those responsible for administering public participation programs. This will lead to better decisions, more satisfactory opportunities for citizens to encourage economy in government, and greater public confidence in government because decisions have been made with participation by interested citizens. It will also encourage better relations among units of government which often find themselves in a dual role of participating in programs of other agencies as well as administering participation programs of their own.

EPA developed a set of concept papers for improved public participation requirements under the three Acts and made them public in early March 1978. These concept papers were circulated to approximately 7,000 interested parties including more than 3,000 who were mailed draft Construction Grants Program regulations dated March 3, 1978. The Agency held two public meetings to receive comment on the concept papers, met with EPA staff in all ten EPA regions, received numerous verbal comments telephoned to the Agency, and met with several outside interest groups including representatives of several States and municipalities and with representatives of the Association of State and Interstate Water Pollution Control Agencies.

As a result of these outreach activities, the EPA received more than 300 written comments on the concept

papers. After considering all comments, EPA revised the concept papers, and published them in the *FEDERAL REGISTER* on August 7, 1978, as proposed regulations. The Agency provided 60 days for public comment, held a public meeting to receive comments in San Francisco on September 21, 1978, held a public hearing on the proposed regulations in Washington, D.C. on September 26, and provided 56 hours of toll-free telephone time to facilitate the submission of comments from individuals from all parts of the Nation.

EPA instituted the toll-free line for submitting comments as an alternative to holding hearings or meetings on the proposed regulations in other parts of the country. Many commenters expressed strong approval of the toll-free line, especially those who lacked the resources to travel readily and therefore would have been unlikely to attend hearings in other cities. Some criticism of our failure to hold hearings throughout the country was also expressed.

EPA received more than 300 comments by October 6, 1978, the date on which the official record closed. Approximately 125 of these were received over the toll-free line. Fifteen witnesses testified at the September 26 public hearing. Additional comments received after October resulted in a total of more than 500 comments. A review of the comments by affiliation indicates that the public involvement effort succeeded in stimulating a balanced and diverse record. Major segments of the public which were well represented include States, substate agencies and units of government, economic interests, planners, engineers, private citizens, public interest groups, and environmental groups.

All comments, including those received shortly after October 6, were reviewed and considered in developing the final regulation.

Virtually all commenters supported the intent of the EPA effort and the objectives of the regulations. In general, those who commented primarily from the perspective of former, current or prospective participants in EPA programs were supportive of the proposed regulations but critical of the Agency for relaxing the regulations relative to the March concept papers. In many cases these commenters called for a return to the more stringent approach of the concept papers, for more specificity and additional requirements, and for limitations on discretion and flexibility. Many of these commenters cited problems which they had experienced with the public participation performance of EPA and units of government at other levels. They pointed out that the establishment of clear, firm re-

quirements would be one of the most effective actions which EPA could take to generate public interest and participation. In contrast, many, although not all, of those commenting as representatives of implementing agencies expressed concern that the regulations were too rigid and detailed and would offer too many opportunities to stop projects or to take legal action on minor procedural issues. These commenters called for a further relaxation of requirements, elimination of detail, and provision of additional flexibility. In many instances, these commenters recognized the flexibility which had been introduced relative to the March concept papers, but indicated that the changes were not sufficient. Some commenters called for EPA to eliminate all requirements and instead to limit itself to setting objectives ("performance standards") which could be fulfilled through a variety of mechanisms. In support of performance standards, many elected officials or their representatives commented that the more general performance standard approach would maintain and protect the authority of State and local officials from Federal encroachment.

EPA agrees that the regulations should provide maximum flexibility and discretion to implementing agencies and should not infringe improperly upon the authority of other governmental units. The Agency is also sensitive to those who accurately pointed out the strong positive relationship between firm requirements, credible public participation efforts, and the willingness of the public to participate. In revising the proposed Part 25, EPA has attempted to provide flexibility wherever it would not interfere with public involvement. In a limited number of instances where it appeared necessary and justified, EPA has opted for more specific requirements. In general, the final Part 25 moves in the direction of fewer specific requirements than the proposed version. The following is a list of changes in the final regulation which have provided increased flexibility and discretion relative to the proposed Part 25, existing Part 105 (Public Participation in Water Programs) and interim final Part 249 (Public Participation in Solid Waste Management):

1. EPA non-policy rulemaking was covered in proposed Part 25. It is specifically excluded from final Part 25.

2. Activities covered by Part 105 but excluded, except as discretionary elements, from the public participation requirements of final Part 25 are as follows: 40 CFR Part 33 (Subagreements), Part 39 (Loan Guarantees for Construction of Treatment Works), Part 40 (Research and Development Grants), Part 45 (Training Grants and

Manpower Forecasting) and Part 46 (Fellowships).

3. Final Part 25 eliminates the annual State report on public participation required by Part 105.3.

4. Part 105.3 (a) and (c) require that informational materials be mailed directly to persons on each agency's mailing list. Part 249.4 (b) and (c) required periodic dissemination of informational materials. Final Part 25.4(b) requires only that notice of the availability of materials be mailed, rather than the materials themselves or summaries of the materials.

5. Part 105.4(d), Part 249.4(e) and proposed Part 25.3(c) required notices and informational materials to be sent to the entire agency mailing list. Final Part 25.4(b)(5) permits segmenting of the list and mailing notices of events (or of availability of materials) only to appropriate portions of the list.

6. The requirement of Part 105.4(b) and Part 249.4(d), for each agency to have "standing arrangements" for consultation with the public, is deleted from final Part 25; although Part 25 continues to require consultation on significant decisions.

7. The requirement of Part 105.4(e), that copying facilities be available at information depositories, is changed to a recommendation in final Part 25.4(b)(3). Part 249.4 (f) and (i) required that information on the availability of copying facilities at convenient locations and at reasonable cost to the public be available. This requirement is deleted.

8. The recommendation in proposed Part 25.3(b), that agencies target informational materials to specific segments of the public, is changed in final Part 25.4(b)(2) to a recommendation to consider preparing targeted materials.

9. Proposed Part 25.3(b) required that "relevant" documents be placed in information depositories. Part 249(f) required that agencies shall provide, either directly or through others, in convenient locations, one or more public collections of Solid and Hazardous Waste Management reports pertinent to the geographic area. Final Part 25.4(b)(3) limits the documents that must be placed in depositories to those relating to significant decisions.

10. The requirement of Part 105.7(d), that public meeting notices be mailed as soon as the meeting is scheduled, is deleted from the final Part 25.

11. The requirement of Part 105.7(d) and Part 249.7(d), that public hearing notices be mailed as soon as the hearing is scheduled, is deleted from the final Part 25.

12. The requirement of Part 105.7(g) and Part 249.7(g) to publish the hearing agenda in the public hearing

notice is deleted from the final Part 25.

13. Part 105.7(c) requires that cases of doubt over whether to hold a public hearing be resolved in favor of holding a hearing. Part 249.7(c) requires that a hearing be held if there is any public interest. These requirements are deleted from the final Part 25.

14. Final Part 25.5(b) gives Regional Administrators the authority to waive public hearing notice requirements in emergency situations.

15. Final Part 25.5(c) permits the agency holding a public hearing to prepare a tape recording or other complete record of the hearing instead of a transcript and make it available to the public.

16. The requirement for financial disclosure by advisory group members, proposed Part 25.3(d)(iii)(D), is deleted from the final Part 25.

17. Final Part 25.7(c) provides new flexibility in advisory group membership requirements and permits EPA to waive those requirements for grantees which cannot meet the requirements after making active, good faith efforts to do so. Proposed Part 25 included a less flexible membership requirement and made no provision for a waiver.

18. Final Part 25.10 permits modification of the public participation work plan with the agreement of the Regional Administrator. No provision for modifying the work plan was included in the proposed Part 25.

19. Public Participation Summaries are deleted from the final Part 25 in favor of Responsiveness Summaries (see final Part 25.11).

20. Final Part 25.7(e) provides an increased State and local agency role in advisory group training. No State and local rule was provided in proposed Part 25.

EPA believes the balance which the final regulations achieve between flexibility and specificity recognizes the public's expressed desire for firm requirements yet responds effectively to the legitimate concern of potential implementing agencies that they have the freedom to tailor their programs to specific local, regional or Statewide needs.

SUMMARY OF RESPONSE TO PUBLIC COMMENT

The following sections respond to other major points raised in comments by the public made in writing, over the toll-free line, at the public meeting, and at the public hearing.

1. *Application of proposed Part 25 to all EPA programs.* In the preamble to the proposed regulations, EPA questioned whether they should be applied to all programs administered by EPA. Public response to this was strongly in favor of consistent requirements for the entire Agency. Comments indicat-

ed that inconsistent requirements were a significant factor impeding public involvement in Agency programs. EPA is responding to this by the development of an Agency-wide policy on public participation. This policy will require each program to develop regulations or guidance implementing it. The Agency will monitor program performance under this approach to determine whether it is successful in achieving consistent public participation requirements and opportunities for those seeking to become involved in Agency programs.

2. *Requirements will not guarantee a successful public participation effort.* Many commenters stated that requirements were not sufficient to assure effective public involvement. Some commenting agencies further stated that, since requirements would not in themselves be effective, EPA appeared to be depending too heavily upon them. EPA recognizes that requirements, while necessary, are only one part of making public participation successful. Equally important is the conduct of effective programs of public education as well as the attitude, energy, and creativity with which implementing agencies, including EPA, undertake their public participation responsibilities. Another significant factor is the availability of agency staff knowledgeable about public participation techniques. EPA is taking action to meet this last need by developing and carrying out a training program in public participation to enhance the capabilities of EPA, State and local agency staff.

3. *Relationship of Part 25 to program regulations and guidance.* Many commenters indicated their belief that Part 25 established new requirements that advisory groups be formed and public hearings held. This is not the case. As explained in the new introductory section 25.1, Part 25 establishes general requirements for open processes of government through public information, public notification, and public consultation prior to significant decisions, but it does not mandate the use of specific public participation mechanisms, such as advisory groups, meetings, and hearings. These are required only when mandated in program regulations or specified at the discretion of a responsible official. The final section of this preamble includes a listing of other EPA regulations which have been or will be revised to implement the requirements of Part 25.

The role of program regulations, or EPA policy guidance memoranda, in implementing the Part 25 regulations is to emphasize the applicability of the general Part 25 public information, notification and consultation requirements to significant decisions in the

affected programs. In some instances program regulations or guidance will also identify significant decisions or processes where specific requirements will apply (e.g., holding a public meeting or hearing). The use of additional specific mechanisms at these decision points or at other decisions not referenced by EPA requirements is discretionary with the implementing agency. If public participation is carried out under EPA grant, all reasonable costs will be grant eligible if identified in a public participation work plan or otherwise approved by EPA.

Other EPA "guidance" will be in the form of handbooks or manuals for implementing agency staff or for the participating public. These are intended to assist the public and implementing agency staff by providing suggestions for ways to meet requirements, samples or models of work which meets requirements, and examples of successful public participation efforts.

4. *Application of Part 25 to programs under the Safe Drinking Water Act.* The public participation regulations are intended to encourage public involvement in the decision-making process in programs under the Resource Conservation and Recovery Act, the Clean Water Act, and the Safe Drinking Water Act. However, not all sections are relevant to every program. For instance, several States' comments reflected a concern that the advisory group requirements in the proposed regulations would require the establishment of such committees in programs under the Safe Drinking Water Act. This concern is unfounded. The advisory group section applies only where committees are required in program regulations. No requirement for such committees appears in the regulations implementing the Safe Drinking Water Act; nor is such a requirement contemplated.

The regulations allow flexibility and discretion in implementation within each covered program. The guidance and regulation which will be developed by the drinking water program, and other programs, will reflect options which are compatible with each program's capabilities and the opportunities within the program for meaningful public participation.

5. *Application to approved State programs.* Each of the three Acts designates certain programs which can be administered by a State, instead of by EPA, if the State program meets criteria established in the law and EPA regulations. The proposed Part 25 indicated that EPA was required to provide for public participation in the process of making a determination to approve such State programs. It also provided that, after approval, the State would be responsible for meeting the public participation requirements

which had been the responsibility of EPA. Like the proposed regulations, final Part 25 requires EPA to provide for public involvement in the process of making its determination regarding approval of all State programs. However, the final Part 25 indicates that public participation requirements for the NPDES Permit Program, the State Hazardous Waste Program, the Dredge and Fill Permit Program, and the Underground Injection Control Program are contained in the Consolidated Permit Program regulations (40 CFR Part 123). These regulations embody the requirements of Part 25. Public participation requirements for the Construction Grants Program are found in 40 CFR Part 35, Subparts E and F. States which undertake Construction Grants Program functions after approval by EPA are responsible for meeting applicable public participation requirements of these regulations, including requirements of Part 25 which are incorporated by reference.

One State expressed concern that the regulations would apply to all State activities which were administered under the annual State program administration grants authorized under section 106 of the Clean Water Act, including State-initiated activities which are not required by the Clean Water Act, which are not delegated to the State by EPA, and which are not funded by EPA grant. While public participation in purely State activities of this type may be desirable, such participation is at the discretion of the State and would not be required by these regulations.

6. *Public participation objectives.* Virtually all commenters supported the public participation objectives of the proposed Part 25; however, several commenters felt that promoting support for environmental laws was not a proper role for administrative agencies. EPA agrees and has changed this objective to read, "to encourage public involvement in implementing environmental laws."

7. *Public information requirements.* Most commenters recognized and supported the need for public information as a prerequisite to effective public participation; however, many stated that the proposed requirements were not clear and, in some cases, were potentially burdensome. In response to comments of this nature, EPA has made the following modifications to the public information provisions of the regulations: permitted segmenting mailing lists by geographic or interest area and specified that only the appropriate portion of the list need receive agency mailings; specified that only summaries and notices of availability need be sent to the list (or appropriate segment) rather than entire docu-

ments; specified that documents available in depositories need include only those relating to significant or controversial issues; clarified the term "reasonable costs" of copying charges by reference to prevailing commercial rates.

8. *Public hearing notice requirements.* Comment on the proposed public hearing notice requirements was sharply divided between State and local agencies which generally opposed any increase in the 30 days required by existing regulations and potential participants (including private citizens, public interest groups, and economic interests) which supported the 45 day notice requirement included in the proposed regulations. The record of citizen comment indicates clearly that 30 days has often been inadequate to allow notices to be circulated, documents obtained and reviewed, and testimony prepared. Accordingly, the final regulations retain 45 days as the standard public hearing notice requirement; however, EPA has responded to the comment by State and local agencies by including a provision to reduce the notice requirement, to not less than 30 days, where EPA finds that the longer notice is not needed to encourage public participation in a particular hearing.

9. *Emphasis on advisory groups.* Many commenters expressed concern that the regulations placed excessive emphasis on the use of advisory groups. We do not believe this concern is justified. Part 25 does not require the formation of any advisory groups. Such groups must be formed only when required by program regulations. Advisory groups have been a requirement in the Water Quality Management (section 208) program for several years. New program regulations for the Construction Grants Program will require advisory groups, but in only 30 percent of facilities plans. No advisory group requirements are contemplated for the Clean Lakes Program, Underground Injection Control Program, Public Water Supply Program, State Hazardous Waste Program, or the NPDES Permit Program. The question of whether they would be required under State Solid Waste Management Program grants is still open. Given this record, we do not agree that the Agency places excessive emphasis on the use of advisory groups.

10. *Role of advisory groups.* The proposed regulations stated that advisory groups were intended to provide advice and recommendations to elected decisionmakers and to encourage an interchange among the interests represented on the group. Some commenters felt that the final decision-making role of elected officials should be emphasized more strongly. We agree, and

have added language to the advisory group section further emphasizing this point.

11. *Advisory group membership.* Comments from most State and local agencies and public officials indicated that the advisory group membership requirements of proposed Part 25 provided them too little flexibility in constituting such groups. They expressed particular objection to the requirement that a majority of advisory group members be private citizens and public interest group members who had no substantial economic interest in the grant activity. Some agencies indicated that they would be unable to locate many individuals without an economic interest in the grant activity who would be willing to serve on advisory groups. Some commenting agencies and public officials indicated that no single segment of the public should constitute a majority on the advisory group. Other commenting agencies and officials expressed approval of the changes in the advisory group requirements that had been made relative to the March concept papers—especially the increased emphasis on the role of public officials and the change allowing economic interests to be represented on advisory groups. Some of these commenters indicated that, with these changes, the advisory group membership requirements were satisfactory. Others indicated that the requirements were still too demanding and inflexible, stated that they could not meet them, and called for additional changes and increased flexibility.

A large majority of private citizen and public interest group commenters expressed approval of the advisory group membership requirements of proposed Part 25. Many of these commenters described their experiences indicating that non-economic interests were under-represented on advisory groups. These commenters supported carefully structured advisory group membership requirements, especially the proposed requirement for a majority of private citizens and public interest group members. Most of these commenters indicated that this measure would go far to remedy the problem of under representation for non-economic interests. However, some called upon EPA to require an even longer proportion of individuals who were interested in the grant supported activity solely from an environmental or taxpayer perspective.

EPA agrees that there must be flexibility in the requirements for advisory group membership. The final regulations require that the advisory group be composed of four segments in substantially equal proportion. These are private citizens, public interest group members, economic interests, and

public officials. In response to commenters who requested EPA to explain the term "private citizen," the regulations indicate that this term refers to individuals with no greater interest in the grant activity than an average taxpayer, ratepayer, or consumer.

The provision that segments need be only "substantially equal" in proportion is intended to provide grantees with flexibility to implement the regulations while at the same time responding to those commenters who called upon EPA to carefully specify the balance of interests on the group. This language allows some imbalance among the categories of membership. For example, on a 20 person advisory group, the requirements would be met if two categories had only four members while the other two had six members. However, if one or more categories had only three members while others had six or seven, the requirement that the categories be in substantially equivalent proportions would not be met.

Many agency commenters expressed concern that they could not meet advisory group requirements because they could not locate private citizens or public interest group representatives who would be willing to serve on advisory groups. To respond to these commenters, the final regulations provide that grantees who have carried out an aggressive effort to recruit members to meet the requirements but cannot do so will be considered in compliance with the regulations. In a case such as this, EPA will approve the advisory group composition which has resulted from the grantee's recruitment efforts provided EPA is satisfied that those efforts meet the performance standard set forth in the regulations.

12. *Financial disclosure by advisory group members.* Many commenters indicated that a financial disclosure requirement would discourage participation of many prospective advisory group members. We agree, and accordingly we have deleted the financial disclosure requirements from the final regulations. We do, however, believe it is useful for advisory group members to know, in general, the type of interest which each member has in a plan or project under development. For example, individuals on the advisory group should indicate to one another whether they are representing environmental interests; economic interests such as agriculture, silviculture, or real estate; recreational interests; consumer interests or others.

13. *Grantee and advisory group responsibilities.* Many commenters indicated the responsibilities of the advisory groups should be stated in detail in the final regulations. In support of this recommendation, these com-

menters cited examples of advisory groups that were formed but not utilized effectively. EPA does not believe it is proper to include a detailed discussion of the responsibilities of grantees and advisory groups in the regulations. It is, however, appropriate to expand somewhat upon the description of responsibilities and authorities included in the proposed regulations, and this has been done in the final regulations.

14. *Use of existing advisory groups to meet public participation requirements.* Some State and substate agencies which have established advisory groups, boards or commissions questioned whether these groups could be used to satisfy the advisory group requirements. EPA wishes to encourage coordination of public participation requirements and activities wherever possible. This is clearly stated in § 25.13, Coordination and nonduplication. Consistent with this, existing advisory groups may be used if they meet the requirements of § 25.7 or are modified to meet those requirements.

15. *Support for advisory group participation.* In the preamble to the proposed regulations, EPA questioned whether reimbursement of advisory group out-of-pocket expenses would be helpful in encouraging public participation and whether it would pose an administrative burden to grantees. Many comments were received on this issue as well as other matters pertaining to advisory group logistics, such as budget and staff for advisory groups. Many commenters indicated that reimbursement of out-of-pocket expenses would encourage participation. Several public interest groups suggested that citizens should be paid for the time they devote to advisory group participation; others urged a more cautious approach emphasizing volunteerism. Several commenting agencies indicated they already operate reimbursement programs for normal out-of-pocket expenses, but would be opposed to extending reimbursement to additional expenses such as payment for time expended in participation.

Since many agencies are already conducting reimbursement programs and since many commenters agree that reimbursement does encourage participation, EPA has determined that grantees shall make reasonable out-of-pocket costs of participation available to advisory group members. EPA will provide information on reimbursement systems to assist any agency which needs to establish a system.

Some commenters recommended that reimbursement be available only to private citizens and other advisory group members who do not represent economic interests. In fairness, we believe that reimbursement of reason-

able out-of-pocket expenses should be available to all group members; however, we recognize that many advisory group members are eligible for reimbursement from the interests which they represent. In the interest of economy, we encourage those advisory group members to consider not requesting reimbursement from the grantee. In accord with OMB Circular 74-4, travel costs of elected officials are not currently eligible for reimbursement.

Many commenters indicated that advisory groups probably would be unable to carry out their responsibilities without their own staff and budget. Most agencies objected that requiring an independent staff for the advisory group conflicted with their status as advisors and could duplicate the efforts of the agency staff. Many agencies indicated that their staff was available to assist the advisory group where needed.

EPA recognizes the need for staff to assist advisory groups. But we agree that providing staff assistance should be the responsibility of the grantee. The final regulations require the grantee to inform the advisory group of staff available to assist it. The regulations also require the grantee to provide the advisory group with an operating budget which can be used to carry out their liaison with the general public and to assist the group in understanding the activity carried out under grant. The budget may be used for mailing, expert advice and other functions as agreed upon between the advisory groups and the grantee.

16. *Public participation program staff.* Many private citizens and public interest groups recommended that EPA require grantees to contract with local citizen groups to carry out public participation functions. Comments from agencies on the wisdom of this approach were mixed; however, agencies felt strongly that this decision should be discretionary. We agree, and, as a result, no such requirement appears in the final regulations. However, grantees are free to use this approach if they believe it will be the most effective in their situation.

Several commenters indicated that EPA should establish the qualifications of public participation staff in regulations. In general, we believe that the following characteristics will contribute to successful accomplishment of public participation responsibilities: familiarity with the affected area; knowledge of at least some of the parties likely to be interested or affected; experience in the skills needed to carry out a public participation program including organizing meetings, providing staff support to advisory groups, and other skills; and sufficient knowledge of the technical and proce-

dural aspects of the grant activity to be able to explain them to the advisory group and other members of the public. EPA believes that these needed characteristics will be apparent to grantees. They will be stated in EPA guidance. However, we do not believe they should be specified in regulation. Accordingly, the final regulation does not specify the qualifications of public participation staff.

One State questioned whether the public participation staff contact for statewide activities could be located in the State agency office. The answer to this question is yes.

17. *Advisory group training.* A number of State and substate agencies indicated that EPA should conduct advisory group training in cooperation with the grantee. We agree, and the regulations have been modified to indicate that advisory group training should be carried out cooperatively by EPA, the State, and any applicable substate agency.

Several agencies commented that training should be provided for their staff as well as for advisory group members. Again we agree. The regulations indicate that agencies may include members of their staff in the training sessions for advisory group.

18. *Advisory group subcommittees and technical advisory groups.* Many commenting agencies questioned whether the advisory group requirements applied to other advisory bodies, such as groups of technical experts. Other agencies questioned whether subcommittees established by advisory groups need have the same composition as the primary advisory group. The regulations do not inhibit agencies from establishing technical panels or similar groups; however it is recommended that these groups be established as subcommittees of the primary advisory group or at least coordinated closely with that group. Any recommendations of technical groups should be reviewed by the primary advisory group, and any comments made by the advisory group should be forwarded to the grantee or decisionmaking officials along with the technical group's recommendations.

Several public interest group commenters indicated that any subcommittees should be required to have the same membership composition as the primary advisory group. EPA believes this would be unnecessarily restrictive. An agricultural subcommittee would logically be composed largely of individuals earning a living through farming, ranching, or related activities. A "severely affected parties" subcommittee might be composed almost entirely of individuals residing within a short distance of the proposed construction site. Even in cases where subcommittees have sharply focused areas of in-

terest, efforts should be made to include individuals who can express other, more general, points of view. Generally subcommittees should contain some members of the full advisory group, but not all subcommittee members need be members of the primary advisory group. Reimbursement need not be made available for subcommittee participation; although this may be done at the discretion of the responsible agency.

19. *Paperwork—Public participation work plans for grant activities.* The proposed regulations specified the information about planned public participation activities which should be included in grant applications. Comment on this section was generally favorable; although some agencies felt that the public participation work plans were not needed. Final Part 25 indicates the information which should be included in a public participation work plan. These plans should be brief. They are needed by EPA as a basis for award of funds for public participation activities.

The submission of this type of information with grant applications is not a new requirement. It is already required for the Construction Grants Program (under 40 CFR 35.917-5), for grant funded activities under the Resource Conservation and Recovery Act (under 40 CFR 249.5) and in the water Quality Management Program by guidance. The final regulation merely standardizes this requirement and emphasizes the brief nature of the required information.

Some agency commenters pointed out that there was no provision for revising the work plan. They expressed concern that this would place them in technical violation if they departed from the schedule in the work plan in even minor respects. We agree. Minor departures from the schedule would not be a violation of requirements. If more substantial changes are expected, the work plan should be revised. Provision for revision is included in the final regulations.

20. *Paperwork—Responsiveness Summaries (modified) and Public Participation Summaries (deleted).* Many commenters indicated that the proposed regulations, although an improvement over the concept papers, still failed to distinguish adequately between the use and content of Responsiveness Summaries and Public Participation Summaries. Some commenters expressed the opinion that the two requirements were duplicative. We agree, and we have eliminated Public Participation Summaries from the final regulation. The requirements for Responsiveness Summaries are more clearly stated.

Responsiveness Summaries are intended to appear immediately after

specific decision points to indicate briefly to the public how decision-makers have responded to their participation. They must be prepared for rulemaking and where required by program regulations or by an approved public participation work plan. Responsiveness Summaries were strongly endorsed by many commenters as a major step forward in fostering responsive government, public understanding of governmental decisions, and public confidence in government. In many instances where a Responsiveness Summary is required in program regulations, it replaces the existing public participation reporting requirements of Part 105.5 or Part 249.5.

Part 25 requires no new reports. Existing Part 105 calls for an annual public participation report by all agencies carrying out responsibilities under the Clean Water Act, including EPA Headquarters program offices and divisions, EPA regional offices, States and interstate agencies. All of these annual reporting requirements are eliminated by final Part 25.

Parts 105.5 and 249.5 contained requirements for reports associated with particular activities, such as the submission of applications for financial assistance and the submission of plans prepared with such assistance. All of these requirements are eliminated from the new Part 25. In some cases, the better defined, briefer, and more useful public participation work plans or Responsiveness Summaries will be required in program regulations at comparable activity points. The net reporting requirements are thereby reduced while making the remaining reports briefer and more sharply focused on important decisions.

21. *Assuring compliance with public participation requirements.* Many public interest group and private citizen commenters objected to the deletion from the proposed regulations of the description of optional sanctions which EPA could apply where the Regional Administrator determined that grantees had not carried out public participation requirements as reflected in their approved public participation work plans. Other commenters called for stronger mandatory action in instances of noncompliance. Many commenting agencies expressed concern that minor technical violations beyond the control of their agencies would be cause for action by EPA.

EPA deleted the descriptions of the optional sanctions in favor of references to the sections of the regulations which provide EPA authority to enforce grant agreements. The Agency believes that to state the full text of these sections in the public participation regulations would be redundant and unnecessary. However, for the

sake of clarity and in order to be consistent with the practice followed elsewhere in final Part 25, the titles of the cited sections have been included in the regulation.

As indicated above, we have included provision for modifying the work plan to reflect major changes. Grantees may make minor departures from the work plan schedule at their discretion provided they do not infringe upon required periods of document availability or public notice.

We do not agree with those commenters who called for more stringent, mandatory sanctions. Accordingly, mandatory EPA action upon a finding of noncompliance remains the same as in the proposed regulations—more careful monitoring of future public participation performance.

PUBLIC EDUCATION AND ASSISTANCE UNDER RESOURCE CONSERVATION AND RECOVERY ACT

Section 8003 of the Resource Conservation and Recovery Act requires EPA to develop information on a comprehensive list of topics pertaining to environmental protection through solid waste management. Interim final 40 CFR Part 249.4(c) indicated that EPA would assist State and substate agencies in carrying out their public information and education responsibilities under the Resource Conservation and Recovery Act by making these agencies among the first recipients of information developed by EPA to meet the requirements of section 8003. Although interim final Part 249 will be deleted from the *Code of Federal Regulations* with the promulgation of the new Part 25, EPA will meet the commitment, stated in Part 249.4(c), to assist State agencies by providing them with informational materials.

Section 249.4(c) also indicated that each EPA Regional Office would designate a public participation officer to coordinate public participation activities relating to solid waste management within EPA and to assist State and substate agencies with their public participation responsibilities under the Resource Conservation and Recovery Act. The requirement to designate regional public participation officers and the commitment to assist other agencies with their public participation programs remains in effect although Part 249 will be deleted from the *Code of Federal Regulations*.

AGENCY EVALUATION AND "SUNSET" POLICY FOR REPORTING REQUIREMENTS

EPA is committed to evaluating this regulation within three years from the date of publication. This will be done by the Office of Water and Waste Management in conjunction with the Office of Public Awareness and the Administrator's Public Participation

Task Force. The evaluation will include such factors as effectiveness of requirements, enforceability, resource expenditure, alternative public participation methods, public reaction, and reporting requirements. The evaluation will also address the issue of whether the increased flexibility introduced into the regulations has had a positive or a negative effect on public participation performance.

Under EPA's new "sunset" policy for reporting requirements in regulations, the reporting requirements in this regulation will automatically expire on (five years from the date of promulgation) unless EPA takes action to extend them. A new provision (§ 25.14) has been added to the regulation which automatically terminates the reporting requirements at that time.

REVISION OF PROGRAM REGULATIONS FOR CONSISTENCY WITH PART 25

The following paragraphs identify specific program regulations which have been or will be revised to bring them into conformance with Part 25.

CLEAN WATER ACT

1. Amendments to Municipal Wastewater Treatment Works Construction Grants Program regulations (40 CFR Part 35, Subpart E) which implement the requirements of Part 25 are promulgated in this issue of the FEDERAL REGISTER.

2. Revised regulations (40 CFR Part 35, Subpart G) implementing water quality planning and management under sections 106 and 208, and reflecting the provisions of proposed Part 25 were published in the FEDERAL REGISTER for comment on September 12, 1978. The final regulations, including changes made in response to public comment and revisions to Part 25, will be promulgated early in 1979.

3. Revised regulations implementing the National Pollutant Discharge Elimination System Permit Program requirements of section 402, and reflecting the provisions of proposed Part 25, were published for comment on August 21, 1978. The final regulations, including changes made in response to public comment and the revisions to proposed Part 25, will be promulgated early in 1979.

4. Regulations implementing the Clean Lakes Program under section 314 and reflecting the provisions of Part 25 will be proposed in February 1979. EPA will accept public comment on the proposed regulations for 60 days following the proposal date. Those wishing to receive additional information or a copy of the proposed regulations should write to Kenneth Mackenthun, Director, Criteria and Standards Division (WH 585), United States Environmental Protection

Agency, 401 M Street, SW., Washington, D.C. 20460.

RESOURCE CONSERVATION AND RECOVERY ACT

1. State Solid Waste Management Plan Guidelines (40 CFR Part 256) under section 4002(b) were proposed for comments on August 28, 1978. The proposed regulations included provisions implementing the requirements of proposed Part 25. EPA will revise the proposed regulations to respond to public comments and changes in Part 25 and promulgate final regulations in June 1979.

2. Regulations for State Programs for Hazardous Waste under section 3006 were proposed for comment on February 1, 1978. EPA will revise these regulations in response to public comment and the requirements of Part 25, repropose them in early 1979, and provide 60 days for public comment. Those who wish to receive additional information or a copy of the proposed regulations should contact Geraldine Wyer, Office of Solid Waste (WH 562), United States Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

3. Regulations for Permit Programs for Hazardous Waste under section 3005 will be proposed in February 1979. EPA will accept public comment on the regulation for 60 days following the date of proposal. The proposed regulations will reflect the provisions of Part 25. Those who wish to receive additional information or a copy of the regulations should contact Geraldine Wyer, Office of Solid Waste (WH 562), United States Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

SAFE DRINKING WATER ACT

1. Regulations for grants to States for implementing Underground Water Source Protection Programs (40 CFR Part 35.650 through 35.680) were proposed for comment on August 31, 1976. Final regulations, reflecting public comment and the provisions of Part 25, will be promulgated in 1979.

NOTE.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis Statement under Executive Orders 11821, 11949, and 12044 and OMB circular A-107.

Dated: February 8, 1979.

DOUGLAS M. COSTLE,
Administrator.

(Sec. 101(e) of the Clean Water Act, as amended, 33 U.S.C. 1251(e); section 7004(b) of the Resource Conservation and Recovery Act, 42 U.S.C. 6974(b); sec. 1450(a)(1) of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j9.)

1. 40 CFR is amended by adding a new Part 25 reading as follows:

PART 25—PUBLIC PARTICIPATION IN PROGRAMS UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT, THE SAFE DRINKING WATER ACT, AND THE CLEAN WATER ACT

- Sec.
25.1 Introduction.
25.2 Scope.
25.3 Policy and objectives.
25.4 Information, notification and consultation responsibilities.
25.5 Public hearings.
25.6 Public meetings.
25.7 Advisory groups.
25.8 Responsiveness summaries.
25.9 Permit enforcement.
25.10 Rulemaking.
25.11 Work elements in financial assistance agreements.
25.12 Assuring compliance with public participation requirements.
25.13 Coordination and non-duplication.
25.14 Termination of reporting requirements.

AUTHORITY: Sec. 101(e) of the Clean Water Act, as amended, 33 U.S.C. 1251(e); sec. 7004(b) of the Resource Conservation and Recovery Act, 42 U.S.C. 6974(b); sec. 1450(a)(1) of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j9.

§ 25.1 Introduction.

This part sets forth minimum requirements and suggested program elements for public participation in activities under the Clean Water Act (Pub. L. 95-217), the Resource Conservation and Recovery Act (Pub. L. 94-580), and the Safe Drinking Water Act (Pub. L. 93-523). The applicability of the requirements of this part is as follows:

(a) Basic requirements and suggested program elements for public information, public notification, and public consultation are set forth in § 25.4. These requirements are intended to foster public awareness and open processes of government decisionmaking. They are applicable to all covered activities and programs described in § 25.2(a).

(b) Requirements and suggested program elements which govern the structure of particular public participation mechanisms (for example, advisory groups and responsiveness summaries) are set forth in §§ 25.5, 25.6, 25.7, and 25.8. This part does not mandate the use of these public participation mechanisms. It does, however, set requirements which those responsible for implementing the mechanisms must follow if the mechanisms are required elsewhere in this chapter.

(c) Requirements which apply to Federal financial assistance programs (grants and cooperative agreements) under the three acts are set forth in §§ 25.10 and 25.12(a).

(d) Requirements for public involvement which apply to specific activities are set forth in § 25.9 (Permit enforcement), § 25.10 (Rulemaking), and § 25.12 (Assuring compliance with requirements).

§ 25.2 Scope.

(a) The activities under the three Acts which are covered by this part are:

(1) EPA rulemaking, except non-policy rulemaking (for example publication of funding allotments under statutory formulas); and State rulemaking under the Clean Water Act and Resource Conservation and Recovery Act;

(2) EPA issuance and modification of permits, and enforcement of permits as delineated by § 25.9;

(3) Development by EPA of major informational materials, such as citizen guides or handbooks, which are expected to be used over several years and which are intended to be widely distributed to the public;

(4) Development by EPA of strategy and policy guidance memoranda when a Deputy Assistant Administrator determines it to be appropriate;

(5) Development and implementation of plans, programs, standards, construction, and other activities supported with EPA financial assistance (grants and cooperative agreements) to State, interstate, regional and local agencies (herein after referred to as "State, interstate, and substate agencies");

(6) The process by which EPA makes a determination regarding approval of State administration of the Construction Grants program in lieu of Federal administration; and the administration of the Construction Grants Program by the State after EPA approval;

(7) The process by which EPA makes a determination regarding approval of State administration of the following programs in lieu of Federal administration: The State Hazardous Waste Program; the NPDES Permit Program; the Dredge and Fill Permit Program; and the Underground Injection Control Program;

(8) Other activities which the Assistant Administrator for Water and Waste Management, the Assistant Administrator for Enforcement, or any EPA Regional Administrator deems appropriate in view of the Agency's responsibility to involve the public in significant decisions.

(b) Activities which are not covered by this part, except as otherwise provided under (a)(8) or (c) of this section, are activities under Parts 33 (Subagreements), 39 (Loan Guarantees for Construction of Treatment Works), 40 (Research and Development Grants), 45 (Training Grants

and Manpower Forecasting) and 46 (Fellowships) of this chapter.

(c) Some programs covered by these regulations contain further provisions concerning public participation. These are found elsewhere in this chapter in provisions which apply to the program of interest. Regulations which govern the use and release of public information are set forth in part 2 of this chapter.

(d) Specific provisions of court orders which conflict with requirements of this part, such as court-established timetables, shall take precedence over the provisions in this Part.

(e) Where the State undertakes functions in the construction grants program, the State shall be responsible for meeting these requirements for public participation, and any applicable public participation requirements found elsewhere in this chapter, to the same extent as EPA.

(f) Where the State undertakes functions in those programs specifically cited in § 25.2(a)(7), the State shall be responsible for meeting the requirements for public participation included in the applicable regulations governing those State programs. The requirements for public participation in State Hazardous Waste Programs, Dredge and Fill Permit programs, Underground Injection Control programs and NPDES permit programs are found in Part 123 of this chapter. These regulations embody the substantive requirements of this part.

(g) These regulations apply to the activities of all agencies receiving EPA financial assistance which is awarded after [the effective date of final regulations], and to all other covered activities of EPA, State, interstate, and substate agencies which occur after that date. These regulations will apply to ongoing grants or other covered activities upon any significant change in the activity (for example, upon a significant proposed increase in project scope of a construction grant). Parts 105 (Public Participation in Water Pollution Control) and 249 (Public Participation in Solid Waste Management) will no longer appear in the Code of Federal Regulations; however, they will remain applicable, in uncoded form, to grants awarded prior to the effective date of this part and to all other ongoing activities.

§ 25.3 Policy and objectives.

(a) EPA, State, interstate, and substate agencies carrying out activities described in § 25.2(a) shall provide for, encourage, and assist the participation of the public. The term, "the public" in the broadest sense means the people as a whole, the general populace. There are a number of identifiable "segments of the public" which may have a particular interest in a

given program or decision. Interested and affected segments of the public may be affected directly by a decision, either beneficially or adversely; they may be affected indirectly; or they may have some other concern about the decision. In addition to private citizens, the public may include, among others, representatives of consumer, environmental, and minority associations; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; public officials; and governmental and educational associations.

(b) Public participation is that part of the decision-making process through which responsible officials become aware of public attitudes by providing ample opportunity for interested and affected parties to communicate their views. Public participation includes providing access to the decision-making process, seeking input from and conducting dialogue with the public, assimilating public viewpoints and preferences, and demonstrating that those viewpoints and preferences have been considered by the decision-making official. Disagreement on significant issues is to be expected among government agencies and the diverse groups interested in and affected by public policy decisions. Public agencies should encourage full presentation of issues at an early stage so that they can be resolved and timely decisions can be made. In the course of this process, responsible officials should make special efforts to encourage and assist participation by citizens representing themselves and by others whose resources and access to decision-making may be relatively limited.

(c) The following are the objectives of EPA, State, interstate, and substate agencies in carrying out activities covered by this part:

(1) To assure that the public has the opportunity to understand official programs and proposed actions, and that the government fully considers the public's concerns;

(2) To assure that the government does not make any significant decision on any activity covered by this part without consulting interested and affected segments of the public;

(3) To assure that government action is as responsive as possible to public concerns;

(4) To encourage public involvement in implementing environmental laws;

(5) To keep the public informed about significant issues and proposed project or program changes as they arise;

(6) To foster a spirit of openness and mutual trust among EPA, States, substate agencies and the public; and

(7) To use all feasible means to create opportunities for public partici-

pation, and to stimulate and support participation.

§ 25.4 Information, notification, and consultation responsibilities.

(a) *General.* EPA, State, interstate, and substate agencies shall conduct a continuing program for public information and participation in the development and implementation of activities covered by this part. This program shall meet the following requirements:

(b) *Information and assistance requirements.* (1) Providing information to the public is a necessary prerequisite to meaningful, active public involvement. Agencies shall design informational activities to encourage and facilitate the public's participation in all significant decisions covered by § 25.2(a), particularly where alternative courses of action are proposed.

(2) Each agency shall provide the public with continuing policy, program, and technical information and assistance beginning at the earliest practicable time. Informational materials shall highlight significant issues that will be the subject of decision-making. Whenever possible, consistent with applicable statutory requirements, the social, economic, and environmental consequences of proposed decisions shall be clearly stated in such material. Each agency shall identify segments of the public likely to be affected by agency decisions and should consider targeting informational materials toward them (in addition to the materials directed toward the general public). Lengthy documents and complex technical materials that relate to significant decisions should be summarized for public and media uses. Fact sheets, news releases, newsletters, and other similar publications may be used to provide notice that materials are available and to facilitate public understanding of more complex documents, but shall not be a substitute for public access to the full documents.

(3) Each agency shall provide one or more central collections of reports, studies, plans, and other documents relating to controversial issues or significant decisions in a convenient location or locations, for example, in public libraries. Examples of such documents are catalogs of documents available from the agency, grant applications, fact sheets on permits and permit applications, permits, effluent discharge information, and compliance schedule reports. Copying facilities at reasonable cost should be available at the depositories.

(4) Whenever possible, agencies shall provide copies of documents of interest to the public free of charge. Charges for copies should not exceed prevailing commercial copying costs. EPA requirements governing charges

for information and documents provided to the public in response to requests made under the Freedom of Information Act are set forth in Part 2 of this chapter. Consistent with the objectives of § 25.3(b), agencies may reserve their supply of free copies for private citizens and others whose resources are limited.

(5) Each agency shall develop and maintain a list of persons and organizations who have expressed an interest in or may, by the nature of their purposes, activities or members, be affected by or have an interest in any covered activity. Generally, this list will be most useful where subdivided by area of interest or geographic area. Whenever possible, the list should include representatives of the several categories of interests listed under § 25.3(a). Those on the list, or relevant portions if the list is subdivided, shall receive timely and periodic notification of the availability of materials under § 25.4(b)(2).

(c) *Public notification.* Each agency shall notify interested and affected parties, including appropriate portions of the list required by paragraph (b)(5) of this section, and the media in advance of times at which major decisions not covered by notice requirements for public meetings or public hearings are being considered. Generally, notices should include the timetable in which a decision will be reached, the issues under consideration, any alternative courses of action or tentative determinations which the agency has made, a brief listing of the applicable laws or regulations, the location where relevant documents may be reviewed or obtained, identification of any associated public participation opportunities such as workshops or meetings, the name of an individual to contact for additional information, and any other appropriate information. All advance notifications under this paragraph must be provided far enough in advance of agency action to permit time for public response; generally this should not be less than 30 days.

(d) *Public consultation.* For the purposes of this part, "public consultation" means an exchange of views between governmental agencies and interested or affected persons and organizations in order to meet the objectives set forth in § 25.3. Requirements for three common forms of public consultation (public hearings, public meetings, and advisory groups) are set forth in §§ 25.5, 25.6, and 25.7. Other less formal consultation mechanisms may include but are not limited to review groups, ad hoc committees, task forces, workshops, seminars and informal personal communications with individuals and groups. Public consultation must be preceded by timely distribution of information and must occur

sufficiently in advance of decision-making to allow the agency to assimilate public views into agency action. EPA, State, interstate, and substate agencies shall provide for early and continuing public consultation in any significant action covered by this part. Merely conferring with the public after an agency decision does not meet this requirement. In addition to holding hearings and meetings as specifically required in this chapter, a hearing or meeting shall be held if EPA, the State, interstate, or substate agency determines that there is significant public interest or that a hearing or meeting would be useful.

(e) *Public information concerning legal proceedings.* EPA, State, interstate, and substate agencies shall provide full and open information on legal proceedings to the extent not inconsistent with court requirements, and where such disclosure would not prejudice the conduct of the litigation. EPA actions with regard to affording opportunities for public comment before the Department of Justice consents to a proposed judgment in an action to enjoin discharges of pollutants into the environment shall be consistent with the Statement of Policy issued by the Department of Justice (see Title 28, Code of Federal Regulations, Chapter 1, § 50.7).

§ 25.5 Public hearings.

(a) *Applicability.* Any non-adjudicatory public hearing, whether mandatory or discretionary, under the three Acts shall meet the following minimum requirements. These requirements are subordinate to any more stringent requirements found elsewhere in this chapter or otherwise imposed by EPA, State, interstate, or substate agencies. Procedures developed for adjudicatory hearings required by this chapter shall be consistent with the public participation objectives of this part, to the extent practicable.

(b) *Notice.* A notice of each hearing shall be well publicized, and shall also be mailed to the appropriate portions of the list of interested and affected parties required by § 25.4(b)(5). Except as otherwise specifically provided elsewhere in this chapter, these actions must occur at least 45 days prior to the date of the hearing. However, where EPA determines that there are no substantial documents which must be reviewed for effective hearing participation and that there are no complex or controversial matters to be addressed by the hearing, the notice requirement may be reduced to no less than 30 days. EPA may further reduce or waive the hearing notice requirement in emergency situations where EPA determines that there is an imminent danger to public health. To the

extent not duplicative, the agency holding the hearing shall also provide informal notice to all interested persons or organizations that request it. The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the agency's tentative determination on major issues (if any), information on the availability of a bibliography of relevant materials (if deemed appropriate), and procedures for obtaining further information. Reports, documents and data relevant to the discussion at the public hearing shall be available to the public at least 30 days before the hearing. Earlier availability of materials relevant to the hearing will further assist public participation and is encouraged where possible.

(c) *Locations and time.* Hearings must be held at times and places which, to the maximum extent feasible, facilitate attendance by the public. Accessibility of public transportation, and use of evening and weekend hearings, should be considered. In the case of actions with Statewide interest, holding more than one hearing should be considered.

(d) *Scheduling presentations.* The agency holding the hearing shall schedule witnesses in advance, when necessary, to ensure maximum participation and allotment of adequate time for all speakers. However, the agency shall reserve some time for unscheduled testimony and may consider reserving blocks of time for major categories of witnesses.

(e) *Conduct of hearing.* The agency holding the hearing shall inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account, the agency's tentative determinations (if any), and the information which is particularly solicited from the public. The agency should consider allowing a question and answer period. Procedures shall not unduly inhibit free expression of views (for example, by onerous written statement requirements or qualification of witnesses beyond minimum identification).

(f) *Record.* The agency holding the hearing shall prepare a transcript, recording or other complete record of public hearing proceedings and make it available at no more than cost to anyone who requests it. A copy of the record shall be available for public review.

§ 25.6 Public meetings.

Public meetings are any assemblies or gathering, (such as conferences, informational sessions, seminars, workshops, or other activities) which the responsible agency intends to be open to anyone wishing to attend. Public

meetings are less formal than public hearings. They do not require formal presentations, scheduling of presentations and a record of proceedings. The requirements of § 25.5 (b) and (c) are applicable to public meetings, except that the agency holding the meeting may reduce the notice to not less than 30 days if there is good reason that longer notice cannot be provided.

§ 25.7 Advisory groups.

(a) *Applicability.* The requirements of this section on advisory groups shall be met whenever provisions of this chapter require use of an advisory group by State, interstate, or substate agencies involved in activities supported by EPA financial assistance under any of the three Acts.

(b) *Role.* Primary responsibility for decision-making in environmental programs is vested by law in the elected and appointed officials who serve on public bodies and agencies at various levels of government. However, all segments of the public must have the opportunity to participate in environmental quality planning. Accordingly, where EPA identifies a need for continued attention of an informed core group of citizens in relation to activities conducted with EPA financial assistance, program regulations elsewhere in this chapter will require an advisory group to be appointed by the financially assisted agency. Such advisory groups will not be the sole mechanism for public participation, but will complement other mechanisms. They are intended to assist elected or appointed officials with final decision-making responsibility by making recommendations to such officials on important issues. In addition, advisory groups should foster a constructive interchange among the various interests present on the group and enhance the prospect of community acceptance of agency action.

(c) *Membership.* (1) The agency receiving financial assistance shall assure that the advisory group reflects a balance of interests in the affected area. In order to meet this requirement, the assisted agency shall take positive action, in accordance with paragraph (c)(3), to establish an advisory group which consists of substantially equivalent proportions of the following four groups:

(i) *Private citizens.* No person may be included in this portion of the advisory group who is likely to incur a financial gain or loss greater than that of an average homeowner, taxpayer or consumer as a result of any action likely to be taken by the assisted agency.

(ii) *Representatives of public interest groups.* A "public interest group" is an organization which reflects a general civic, social, recreational, environmen-

tal or public health perspective in the area and which does not directly reflect the economic interests of its membership.

(iii) *Public officials.*

(iv) *Citizens or representatives of organizations with substantial economic interests in the plan or project.*

(2) Generally, where the activity has a particular geographic focus, the advisory group shall be made up of persons who are residents of that geographic area.

(3) In order to meet the advisory group membership requirements of paragraph (c)(1), the assisted agency shall:

(i) Identify public interest groups, economic interests, and public officials who are interested in or affected by the assisted activity.

(ii) Make active efforts to inform citizens in the affected area, and the persons or groups identified under paragraph (c)(3)(i), of this opportunity for participation on the advisory group. This may include such actions as placing notices or announcements in the newspapers or other media, mailing written notices to interested parties, contacting organizations or individuals directly, requesting organizations to notify their members through meetings, newsletters, or other means.

(iii) Where the membership composition set forth in paragraph (c)(1) is not met after the above actions, the assisted agency shall identify the causative problems and make additional efforts to overcome such problems. For example, the agency should make personal contact with prospective participants to invite their participation.

(iv) Where problems in meeting the membership composition arise, the agency should request advice and assistance from EPA.

(d) The assisted agency shall record the names and mailing addresses of each member of the advisory group, with the attributes of each in relation to the membership requirements set forth in paragraph (c)(1), provide a copy to EPA, and make the list available to the public. In the event that the membership requirements set forth in paragraph (c)(1) are not met, the assisted agency shall append to the list a description of its efforts to comply with those requirements and an explanation of the problems which prevented compliance. EPA shall review the agency's efforts to comply and approve the advisory group composition or, if the agency's efforts were inadequate, require additional actions to achieve the required membership composition.

(e) *Responsibilities of the assisted agency.* (1) The assisted agency shall designate a staff contact who will be responsible for day-to-day coordination among the advisory group, the

agency, and any agency contractors or consultants. The financial assistance agreement shall include a budget item for this staff contact. Where substantial portions of the assisted agency's responsibilities will be met under contract, the agency shall require a similar designation, and budget specification, of its contractor. In the latter event, the assisted agency does not have to designate a separate staff contact on its own staff, if the Regional Administrator determines that the contractor's designation will result in adequate coordination. The staff contact shall be located in the project area.

(2) The assisted agency has such responsibilities as providing the advisory group with information, identifying issues for the advisory group's consideration, consulting with the advisory group throughout the project, requesting the advisory group's recommendations prior to major decisions, transmitting advisory group recommendations to decision-making officials, and making written responses to any formal recommendation by the advisory group. The agency shall make any such written responses available to the public. To the maximum extent feasible, the assisted agency shall involve the advisory group in the development of the public participation program.

(3) The assisted agency shall identify professional and clerical staff time which the advisory group may depend upon for assistance, and provide the advisory group with an operating budget which may be used for technical assistance and other purposes agreed upon between the advisory group and the agency.

(4) The assisted agency shall establish a system to make costs of reasonable out-of-pocket expenses of advisory group participation available to group members. Time away from work need not be reimbursed; however, assisted agencies are encouraged to schedule meetings at times and places which will not require members to leave their jobs to attend.

(f) *Advisory group responsibilities and duties.* The advisory group may select its own chairperson, adopt its own rules of order, and schedule and conduct its own meetings. Advisory group meetings shall be announced well in advance and shall be open to the public. At all meetings, the advisory group shall provide opportunity for public comment. Any minutes of advisory group meetings and recommendations to the assisted agency shall be available to the public. The advisory group should monitor the progress of the project and become familiar with issues relevant to project development. In the event the assisted agency and the advisory group agree that the advisory group will assume public par-

ticipation responsibilities, the group should undertake those responsibilities promptly. The advisory group should make written recommendations directly to the assisted agency and to responsible decision-making officials on major decisions (including approval of the public participation program) and respond to any requests from the agency or decision-making officials for recommendations. The advisory group should remain aware of community attitudes and responses to issues as they arise. As part of this effort, the advisory group may, within the limitations of available resources, conduct public participation activities in conjunction with the assisted agency; solicit outside advice; and establish, in conjunction with the assisted agency, subcommittees, ad hoc groups, or task forces to investigate and develop recommendations on particular issues as they arise. The advisory group should undertake its responsibilities fully and promptly in accordance with the policies and requirements of this part. Nothing shall preclude the right of the advisory group from requesting EPA to perform an evaluation of the assisted agency's compliance with the requirements of this part.

(g) *Training and assistance.* EPA will promptly provide appropriate written guidance and project information to the newly formed advisory group and may provide advice and assistance to the group throughout the life of the project. EPA will develop and, in conjunction with the State or assisted agency, carry out a program to provide a training session for the advisory group, and appropriate assisted agency representatives, promptly after the advisory group is formed. The assisted agency shall provide additional needed information or assistance to the advisory group.

§ 25.8 Responsiveness summaries.

Each agency which conducts any activities required under this part shall prepare a Responsiveness Summary at specific decision points as specified in program regulations or in the approved public participation work plan. Responsiveness Summaries are also required for rulemaking activities under § 25.10. Each Responsiveness Summary shall identify the public participation activity conducted; describe the matters on which the public was consulted; summarize the public's views, significant comments, criticisms and suggestions; and set forth the agency's specific responses in terms of modifications of the proposed action or an explanation for rejection of proposals made by the public. Responsiveness Summaries prepared by agencies receiving EPA financial assistance shall also include evaluations by the agency of the effectiveness of the public par-

ticipation program. Assisted agencies shall request such evaluations from any advisory group and provide an opportunity for other participating members of the public to contribute to the evaluation. (In the case of programs with multiple responsiveness summary requirements, these analyses need only be prepared and submitted with the final summary required.) Responsiveness summaries shall be forwarded to the appropriate decision-making official and shall be made available to the public. Responsiveness Summaries shall be used as part of evaluations required under this part or elsewhere in this chapter.

§ 25.9 Permit enforcement.

Each agency administering a permit program shall develop internal procedures for receiving evidence submitted by citizens about permit violations and ensuring that it is properly considered. Public effort in reporting violations shall be encouraged, and the agency shall make available information on reporting procedures. The agency shall investigate alleged violations promptly.

§ 25.10 Rulemaking.

(a) EPA shall invite and consider written comments on proposed and interim regulations from any interested or affected persons and organizations. All such comments shall be part of the public record, and a copy of each comment shall be available for public inspection. EPA will maintain a docket of comments received and any Agency responses. Notices of proposed and interim rulemaking, as well as final rules and regulations, shall be distributed in accordance with § 25.4(c) to interested or affected persons promptly after publication. Each notice shall include information as to the availability of the full texts of rules and regulations (where these are not set forth in the notice itself) and places where copying facilities are available at reasonable cost to the public. Under Executive Order 12044 (March 23, 1978), further EPA guidance will be issued concerning public participation in EPA rulemaking. A Responsiveness Summary shall be published as part of the preamble to interim and final regulations. In addition to providing opportunity for written comments on proposed and interim regulations, EPA may choose to hold a public hearing.

(b) State rulemaking specified in § 25.2(a)(1) shall be in accord with the requirements of subparagraph (a) of this paragraph or with the State's administrative procedures act, if one exists. However, in the event of conflict between a provision of paragraph (a) and a provision of a State's administrative procedures act, the State's law shall apply.

§ 25.11 Work elements in financial assistance agreements.

(a) This section is applicable to activities under § 25.2(a)(5) except as otherwise provided in Parts 30 or 35.

(b) Each applicant for EPA financial assistance shall set forth in the application a public participation work plan or work element which reflects how public participation will be provided for, encouraged, and assisted in accordance with this part. This work plan or element shall cover the project period. At a minimum, the work plan or element shall include:

(1) Staff contacts and budget resources to be devoted to public participation by category;

(2) A proposed schedule for public participation activities to impact major decisions, including consultation points where responsiveness summaries will be prepared;

(3) An identification of consultation and information mechanisms to be used;

(4) The segments of the public targeted for involvement.

(c) All reasonable costs of public participation incurred by assisted agencies which are identified in an approved public participation work plan or element, or which are otherwise approved by EPA, shall be eligible for financial assistance.

(d) The work plan or element may be revised as necessary throughout the project period with approval of the Regional Administrator.

§ 25.12 Assuring compliance with public participation requirements.

(a) *Financial assistance programs.*

(1) *Applications.* EPA shall review the public participation work plan (or, if no work plan is required by this chapter for the particular financial assistance agreement, the public participation element) included in the application to determine consistency with all policies and requirements of this part. No financial assistance shall be awarded unless EPA is satisfied that the public participation policies and requirements of this part and, any applicable public participation requirements found elsewhere in this chapter, will be met.

(2) *Compliance.* (i) *Evaluation.* EPA shall evaluate compliance with public participation requirements using the work plan, responsiveness summary,

and other available information. EPA will judge the adequacy of the public participation effort in relation to the objectives and requirements of § 25.3 and § 25.4 and other applicable requirements. In conducting this evaluation, EPA may request additional information from the assisted agency, including records of hearings and meetings, and may invite public comment on the agency's performance. The evaluation will be undertaken as part of any mid-project review required in various programs under this chapter; where no such review is required the review shall be conducted at an approximate mid-point in continuing EPA oversight activity. EPA may, however, undertake such evaluation at any point in the project period, and will do so whenever it believes that an assisted agency may have failed to meet public participation requirements.

(ii) *Remedial actions.* Whenever EPA determines that an assisted agency has not fully met public participation requirements, EPA shall take actions which it deems appropriate to mitigate the adverse effects of the failure and assure that the failure is not repeated. For ongoing projects, that action shall include, at a minimum, imposing more stringent requirements on the assisted agency for the next budget period or other period of the project (including such actions as more specific output requirements and milestone schedules for output achievement; interim EPA review of public participation activities and materials prepared by the agency, and phased release of funds based on compliance with milestone schedules.) EPA may terminate or suspend part or all financial assistance for non-compliance with public participation requirements, and may take any further actions that it determines to be appropriate in accordance with Parts 30 and 35 of this chapter (see, in particular, §§ 30.340, Noncompliance and 30.615-3, Withholding of Payments, and Subpart H of Part 30, Modification, Suspension, and Termination).

(b) *State programs approved in lieu of Federal programs.* State compliance with applicable public participation requirements in programs specified in sections 25.2(a) (6) and (7) and administered by approved States shall be monitored by EPA during the annual

review of the State's program, and during any financial or program audit or review of these programs. EPA may withdraw an approved program from a State for failure to comply with applicable public participation requirements.

(c) *Other covered programs.* Assuring compliance with these public participation requirements for programs not covered by paragraphs (a) and (b) of this section is the responsibility of the Administrator of EPA. Citizens with information concerning alleged failures to comply with the public participation requirements should notify the Administrator. The Administrator will assure that instances of alleged non-compliance are promptly investigated and that corrective action is taken where necessary.

§ 25.13 Coordination and non-duplication.

The public participation activities and materials that are required under this part should be coordinated or combined with those of closely related programs or activities wherever this will enhance the economy, the effectiveness, or the timeliness of the effort; enhance the clarity of the issue; and not be detrimental to participation by the widest possible public. Hearings and meetings on the same matter may be held jointly by more than one agency where this does not conflict with the policy of this paragraph. Special efforts shall be made to coordinate public participation procedures under this part and applicable regulations elsewhere in this chapter with environmental assessment and analysis procedures under 40 CFR Part 6. EPA encourages interstate agencies in particular to develop combined proceedings for the States concerned.

§ 25.14 Termination of reporting requirements.

All reporting requirements specifically established by this part will terminate on (5 years from date of publication) unless EPA acts to extend the requirements beyond that date.

PART 105 [REVOKED]

PART 249 [REVOKED]

2. 40 CFR is amended by deleting Parts 105 and 249.

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